IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12532 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDAMA GIRIRAJ GAUTAM BRAHMIN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 18/08/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 08.02.2006 by which he is detained as a Bootlegger under the

Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to a solitary case pending against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. The detaining authority, after having been satisfied subjectively, has passed the aforesaid order detaining the petitioner as a Bootlegger under the provisions of the PASA Act.

Learned advocate for the petitioner submitted that except a solitary case, there is no other material to indicate that the activities of the petitioner are prejudicial to public health or public order. He further submitted that statement of not even a single witness has been recorded in the matter under section 9(2) of the PASA Act. Learned advocate submitted that at the most it can be said that the activities of the petitioner is in breach of law and order, and not public order. It is also submitted by the learned advocate for the petitioner that there is no credible material to show that by dealing in the so called liquor, the petitioner has tried to harm public health. He further submitted that there is no report of any laboratory to the effect that consumption of the so called liquor is dangerous to public health so as to attract the provisions of the Act.

Learned advocate for the petitioner has relied

upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822 : (2005) 3 SCC 663. In the aforesaid case, the Supreme Court has observed as under in paragraphs 7 and 8 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.
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> 8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the

> maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

In the instant case, it is not in dispute that except a solitary criminal cases, there is neither statement of any independent witnesses nor any documents on the record to suggest that the said activities of the petitioner prejudicially affect public health or that by the said activities, the even tempo of public is disturbed. The offence registered against the petitioner is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order.

Learned Assistant Government Pleader is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health or that the petitioner has violated public order.

In the result, the petition is allowed. Order of detention passed against the detenu dated 08.02.06 is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary statement that the detenue will not leave the limits of Ankleshwar Town upto 31st October 2006 except for attending the criminal case. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

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